UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

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POLYTECHNIC INSTITUTE OF NEW YORK UNIVERSITY,	:	
	:	
Employer,		
	:	
-and-		Case No. 29-RC-12054
	:	
INTERNATIONAL UNION, AUTOMOBILE		
AEROSPACE AND AGRICULTURAL	:	
IMPLEMENT WORKERS OF AMERICA,		
UAW (UAW),	:	
Petitioner.		
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POLYTECHNIC INSTITUTE OF NEW YORK UNIVERSITY'S OPPOSITION TO PETITIONER'S REQUEST FOR REVIEW

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Petitioner fails to present compelling reasons for the Board to reconsider *Brown University*, 342 NLRB 483 (2004). Instead, it asks the Board to reverse *Brown* based on nothing more than its own disagreement with the holding and a rehashing of the same arguments presented to and rejected by the Board in *Brown*.

Petitioner similarly has not demonstrated any basis for review of the Regional Director's decision that the Polytechnic Research Assistants ("RAs") are not employees under the Act even if *Brown* is reversed. Indeed, Petitioner fails to articulate any basis for review under Section 102.67 of the Board's Rules and Regulations. It disagrees with the Regional Director's finding that RAs do not perform services for Polytechnic, but that finding is amply supported by the record and brings Polytechnic's RAs squarely within the holdings of *Leland Stanford Jr. University*, 214 NLRB 621 (1974) ("*Leland Stanford*") and *New York University*, 332 NLRB 1204 (1999) ("*NYU I*").

RELEVANT FACTS

A. Polytechnic is an Educational Institution

Polytechnic is the second oldest private engineering school in the country and has been in existence for over 150 years. (Decision at 3) Its stated mission is "[t]o excel as a leading high-quality research university engaged in education, discovery and innovation with social, intellectual and economic impact in the New York Region, the nation and the world." (*Id.*) To this end, Polytechnic offers degrees, both undergraduate and graduate in 11 academic departments, has a total of nearly 4,000 students, about 1,700 undergraduate and

2,300 graduate, and employs approximately 155 full-time faculty members. (*Id.*; Tr. 329 (Becker))

B. Graduate Study at Polytechnic

1. <u>The PhD Degree</u>

The PhD degree is a research degree that culminates in the submission and defense of an original research thesis. (Decision at 10) Therefore, once students have completed their coursework and passed a qualifying exam, which usually occurs at the end of their first year of study, they dedicate the majority of the duration of the PhD program to performing the research necessary for completing their thesis. (Decision at 3, 10; Tr. 187 (Bonilla); Tr. 337, 339, 343 (Becker); Tr. 428 (Zurawsky); Tr. 477 (Garetz)) Students do not complete their theses alone, but with the guidance and mentorship of a faculty advisor whose research interests align with their own. (Tr. 340 (Becker)) The process of selecting a faculty advisor occurs naturally as "[d]octoral applicants to a PhD program typically don't select a university because of the university. They select it because of a PhD program. And even more specifically because of a particular faculty member that they would like to work with." (*Id.*) Therefore, doctoral students generally enter Polytechnic with a particular thesis advisor in mind.

Polytechnic provides support for its PhD students to fund their education through two primary mechanisms – externally funded research assistantships and teaching assistantships. (Tr. 341 (Becker)) As a matter of practice, students typically are supported as teaching assistants ("TAs") in their first year and are supported as RAs once they pass their PhD qualifying exams and begin their thesis research. (Decision at 5, 12; Tr. 429 (Zurawsky) Tr.

470 (Garetz); Tr. 119 (Han)) However, whether students are supported as TAs or RAs, they all receive a standard financial aid package that consists of a stipend for the nine-month academic year, up to 18 credits per year of tuition remission and fees and health insurance. (Decision at 9, Tr. 348-49, 353 (Becker))

Although the Institute provides two levels of stipends to its doctoral students (one for students who have not yet completed their qualifying exam and one for students who successfully complete their qualifying exam and are admitted into PhD candidacy), these stipend levels do not vary based on an individual student's skill, time spent performing tasks related to the appointment, or other differences in responsibilities; they relate to status as a student. (Tr. 348, 353-54 (Becker); *see also* Decision at 9) Moreover, as a vehicle for funding doctoral study, TA and RA appointments are directly related to and, in most instances, indistinguishable from the study itself and therefore unquestionably educational in nature.

(a) Research Assistants

The "vast majority" of PhD students at Polytechnic support their study through RA positions in which they perform research in association with a research grant that is typically externally funded. (Decision at 12) The grants that provide funding for RA positions are obtained by individual faculty members who serve as the Principal Investigator ("PI") on the grant and who supervise the research performed in connection with it. (Decision at 11; Tr. 384 (Becker))

When a student is appointed to a research assistantship, he or she receives an appointment letter. Although the appointment letter for RAs states that they are expected to "allocate approximately 20 hours per week to the performance of assigned tasks," there is no

specific number of hours that RAs work on their research, and students typically spend much more than 20 hours per week working on their research. (Decision at 11; Tr. 363 (Becker); EX 9) In order to hold a position as an RA, an individual must be registered as a full-time PhD student at Polytechnic. (EX 8 at p.48; *see also* EX 9)

These formalities aside, it is near universal that the ultimate purpose and day to day work involved in a research assistantship for PhD students is nothing more than the completion of the doctoral thesis. First, as conceded by Petitioner, the research performed by RAs is almost always their thesis research.

1 (See Pet. Request for Review at 17; Decision at 11, 14; Tr. 115, 121-22, 136, 138 (Han); Tr. 433, 436 (Zurawsky); Tr. 475-76 (Garetz))

Second, a student's thesis advisor is also the PI on the grant for which he or she serves as an RA. (Tr. 120 (Han); Tr. 427 (Zurawsky); Tr. 475 (Garetz)) Students meet with their thesis advisors on a regular basis, weekly, if not daily, to discuss the progress of their thesis research and any issues that may have arisen. (Tr. 129-30 (Han); Tr. 478-79 (Garetz))

Third, in addition to receiving a stipend and tuition remission for their role as an RA, RAs also receive academic credit for performing their RA duties that does not reflect anything other than the work on their thesis that the student is doing as an RA. (Decision at 11; Tr. 356 (Becker); Tr. 434 (Zurawsky)) Students register and pay for these research courses as they would any other course and receive grades based solely on their research from the PI on the grant, who is also their thesis advisor. (Tr. 88 (Purushothaman); Tr. 138-

¹ The only exception identified at the hearing to this uniform evidence that RAs work on their dissertation research was the unusual case of Sujit Purushothaman, a PhD student in Electrical Engineering. Purushothaman testified that he was working on two research projects as an RA that are unrelated to his thesis work. (Tr. 82-83 (Purushothaman)) However, as the Regional Director explained, this was extremely uncommon and due to the fact that Mr. Purushothaman published the results of his dissertation work early on in his PhD studies and took on these additional research projects in order to diversify his research and that this was extremely uncommon. (Decision at 11, n. 19)

39 (Han); Tr. 434-35 (Zurawsky)) Thus, a student's research assistantship constitutes his or her required coursework to receive a PhD. (Tr. 356 (Becker))

Fourth, in the research laboratory, there is no difference between what RAs are doing and what students who are not RAs are doing; "they are all pursuing their thesis work. They are all doing their dissertation work." (Tr. 434 (Zurawsky))

Finally, even the granting agencies focus on the educational aspect of the RA position. The National Science Foundation -- the primary federal agency providing grants to Polytechnic -- expressly requires that every grant application includes a description of how the proposed research and education are linked and to identify all mechanisms in place to mentor the PhD students performing such research. (Tr. 354 (Becker); Tr. 527 (Garetz); PX 20 at 465)

As the Regional Director found, it is clear that RAs at Polytechnic are conducting research that is "required in order to receive their doctorate." (Decision at 14)

(b) Teaching Assistants

TAs at Polytechnic are typically assigned to work in undergraduate teaching laboratories, and may also perform some grading; they do not lead recitation sections of lecture courses. (Decision at 9; Tr. 345 (Becker); Tr. 430 (Zurawsky)) Within the laboratories, each TA assumes responsibility for several groups of undergraduate students, ensuring that the correct equipment is available and in working order, guiding the students in setting up the experiments and verifying that the appropriate steps have been completed

² This same lack of distinction between students who are RAs and students who are not applies to responsibilities for equipment in the laboratories. (Tr. 357-59 (Becker); 483 (Garetz))

before turning on certain pieces of equipment. (Decision at 9; Tr. 346, 374 (Becker); Tr. 488 (Garetz); *see also* Tr. 147 (Han)) The TA also answers general questions about the experiments, and the science behind those experiments, and may administer a short quiz at the beginning of an experiment to confirm that the students are properly prepared. (Tr. 346 (Becker)) Finally, TAs also may grade the written laboratory reports submitted at the end of each experiment, which are often quite lengthy and demanding. (Tr. 346-47, 375 (Becker); (Tr. 431-32 (Zurawsky); *see also* Tr. 151 (Han)) (Tr. 431-32 (Zurawsky))

The TA positions are an important aspect of doctoral students' education that "sharpen both their laboratory skills and teaching skills." (Decision at 14) They provide students with a new vantage point for learning their chosen field, broadening their knowledge of the subject matter. (Tr. 347 (Becker); Tr. 432 (Zurawsky); Tr. 489 (Garetz); *see also* Decision at 10) Moreover, serving as a TA directly prepares students for careers in academia or other research positions. Students who work in academia are receiving training needed to teach undergraduates in laboratory courses similar to those they are helping to run at Polytechnic. Those who go into careers as research assistants in government or private industry similarly are learning invaluable communications skills. (Decision at 10; Tr. 432-33 (Zurawsky); Tr.489 (Garetz))

Finally, TAs often develop close and invaluable relationships with the faculty member leading a course, who mentors the TAs at the beginning of the semester. (*See* Decision at 9, 14) This can serve as the basis for future mentoring relationships while also providing the TA with an opportunity to receive critical assistance in the preparing and presenting material to students. (Tr. 375-76 (Becker)) Faculty members also attend portions

of the laboratory sessions, working with the TAs as well as the undergraduates in the course. (Tr. 347-48, 376 (Becker); Tr. 487-88 (Garetz))

2. The Master's Degree and Graduate Assistants

The Master's degree programs at Polytechnic are designed for students who are seeking to specialize in a particular field before entering an industry or government position. (Tr. 424 (Zurawsky)) A Master's degree typically requires two years of coursework, representing 30 credits, and may also include the option to complete a Master's thesis. (Tr. 423 (Zurawsky); *see also* Tr. 278 (Bonilla); Tr. 464 (Garetz))

Polytechnic primarily supports its Master's students through appointments as graduate assistants ("GAs") under the Graduate Student Employment and Training ("GSET") Program, which serves the academic and career needs of the Master's students by providing them with real-life experiences within the academic setting that prepares them for their future career. (Decision at 5, Tr. 177-8, 200, 248, 255 (Bonilla): Tr. 488 (Garetz); Tr. 629 (Ives)) Accordingly, the GSET program only seeks out projects that enrich the students' courses of study. (Decision at 14) GA appointments are in academic and administrative departments throughout the school and are each supervised by a specific faculty or staff member who "sponsors" the position and ensures that the student and project meet academic requirements. (Decision at 5-6; Tr. 178, 202-04, 215 (Bonilla); PX 15)

GAs secure their positions either through an online database that lists positions prescreened for academic relevance for which they can apply, through their connection with a particular faculty member who creates a project for them or through the Graduate Center.

(Decision at 6) Once a GA accepts a position, he or she works with a specific faculty or staff

member who serves as his or her supervisor and ensures that the project matches the job description and that the student is maintaining the academic standing to retain a GA position. (Decision at 7; Tr. 202-04, 215 (Bonilla); PX 15) Specifically, if a student does not maintain a GPA of 3.0, he or she cannot be considered for re-appointment to a GA position for another semester. (Decision at 7; Tr. 208 (Bonilla); PX 14) Moreover, a student may be removed from the GA position if he or she is not meeting the expectations of the GSET Program with respect to academic or other measures. (Decision at 7; Tr. 210 (Bonilla); PX 14) Therefore a student's academic advisor may also become involved if there are issues with a GA position. (Tr. 295 (Bonilla))

Given the academic goal of the GSET Program all GA projects must be academically meaningful, and Juan Carlo Bonilla, the Director of the Graduate Center and Abudi Pai, the academic advisor for GSET,³ review all GA positions prior to funding them to ensure that they meet this criteria. (Decision at 6, 14; Tr. 178, 195, 201, 236 (Bonilla) Those that do not meet these requirements are rejected, and, since GAs have their own "special assignment" and are not performing the same work as Polytechnic employees, if a proposed position is rejected, the contemplated project typically is not completed. (Tr. 250, 260-62 (Bonilla); Tr. 623 (Ives); *see also* Decision at 6) Finally, the GSET Handbook specifically reminds members of the Polytechnic community who work with GAs of their "responsibility to assist the student in leveraging this employment opportunity for the betterment of their educational experience and career." (EX 5)

³ As part of his role, Pai also holds office hours to determine the particular academic and career goals of each student, and works with Bonilla to match students' academic programs and career goals as well as their strengths and weaknesses with possible projects. (Tr. 192, 196-97 (Bonilla))

The GSET Program offers two separate tracks of positions -- the Graduate Academic Experience and the Graduate Service Experience. (Decision at 5; Tr. 252 (Bonilla); EX 4 at 2) The Graduate Academic Experience provides students with opportunities in academic departments while the Graduate Service Experience provides students with opportunities to assist in non-academic units of the University. (Tr. 252-53 (Bonilla)) Nearly 75% of students in the GSET Program choose the Graduate Academic Experience. (Tr. 599 (Bonilla); EX 21) GA positions offered in accordance with both of these tracks focus on the students' academic goals. (Decision at 14; EX 4 at 1)

Almost 90 percent of students in the Graduate Academic Experience "work on research and other academics-related projects" usually within their own academic departments. (Decision at 5-6) These projects include assisting in research or as laboratory instructors. (Decision at 5, 8; Tr. 562, 595, 599 (Bonilla); EX 6; EX 21) The research positions provide the students with hands-on experience in performing research in their chosen field. (EX 4 at 3; *see also* Decision at 8) The instructor positions afford the GAs the same educational benefits received by TAs, specifically the "educational experience" of teaching other students in one's own field of study, which forces a student to learn the material in a new and more in-depth manner. (Tr. 489 (Garetz)) Finally, these students are often taking courses from the same professors for whom they are performing these duties and, in many instances, their duties as GAs directly complement their coursework. (Tr. 315 (Bonilla))

Students with GA positions on the Graduate Service Experience track also perform duties related to their own areas of study and work on projects specifically tailored to their academic programs. (Tr. 262-4 (Bonilla); EX 21; *see also* Decision at 8) For instance,

students studying Industrial Engineering have been asked to conduct lean manufacturing studies to assist the graduate school streamline its admissions processes. (Decision at 8; Tr. 572-73 (Bonilla)) Finally, as with RAs and TAs, many students in the GSET program develop mentoring relationship with their supervisors. (Tr. 640-41 (Ives))

In addition to being geared toward each student's individual academic goals, the GSET Program also provides all GAs with the opportunity to participate in both mandatory and optional training programs and workshops designed to further complement their courses of study. (Decision at 7; Tr. 247-48, 556-57 (Bonilla); EX 13 – EX 15) These include a mandatory workshop in communications skills, which provided small breakout sessions with the leader and written educational materials, as well as optional seminars in library on-line research and presentation skills. (Tr. 277-79, 542, 544-45, 553-54, 590-91 (Bonilla); EX 13; EX 15) These workshops only are publicized to GAs; Polytechnic staff and faculty are not permitted to participate. (Tr. 550, 591, 592 (Bonilla)) GSET also offers programs run by Polytechnic faculty members that focus on their research and how to engage in research activities. (Tr. 549-51 (Bonilla); EX 17) In addition to complementing the GAs' own academic programs in content, these workshops are structured to provide a classroom-like experience. (Tr. 558 (Bonilla))

ARGUMENT

I. PETITIONER HAS FAILED TO DEMONSTRATE A COMPELLING REASON TO REVERSE *BROWN*

Petitioner has not presented any compelling reason to the Board for granting review of the Regional Director's dismissal of the petition. Its Request for Review largely repeats the same arguments made by the dissenting Board members in *Brown*.

Pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board, there are only four grounds for establishing the "compelling reasons" necessary for the Board to grant a request for review. The "stringent requirement" to satisfy one of these four grounds is not easily met. *St. Barnabas Hospital and Committee of Interns*, 355 NLRB No. 39, *slip op*. at 1 (June 3, 2010) (refusing review based on the failure of a party to demonstrate a compelling reason and noting that, as is the case here, the decision had been in place for several years without challenge from the federal courts.)

Under Section 102.67,

a request for review may be granted only upon one or more of the following grounds:

- (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent.
- (2) That the Regional Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.
- (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.
- (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

Petitioner has presented no new evidence that invalidates the holding of *Brown*; Petitioner has shown no changed circumstances that merit reconsideration of *Brown* in this matter; and

Petitioner has not pointed the Board to recent decisions that suggest that *Brown* was wrongly decided.

Petitioner instead relies principally on the Board's decision in *New York University*, 356 NLRB No. 7 at *1 (October 25, 2010) ("*NYU II*") in which the majority stated its belief that "there are compelling reasons for reconsideration of the decision in *Brown University*." That belief however was explicitly predicated on the petitioner's offer in that case to present both "evidence of collective-bargaining experience in higher education as well as expert testimony demonstrating that, even giving weight to the considerations relied on by the Board in *Brown University*, the graduate students are appropriately classified as employees under the Act." *Id.* There was no such evidence presented in this case. The Petitioner's attempted reliance on the record and Request for Review filed in the NYU case (*see* Pet. Request for Review at 9-10) is violative of both the Board's requirement that a request for review be a self-contained document and basic notions of due process. *NYU II* involved a different petitioner, ⁴ a different employer ⁵ and an entirely different set of facts.

Notably, although Member Hayes predicted in his dissent that reversal of *Brown* was "a preordained result," 356 NLRB at *3, the Board has not yet acted on the union's Request for Review filed in *NYU II* on June 30, 2011, following the conclusion of hearing and dismissal of the petition by the Acting Regional Director for Region 2 based on *Brown*. In light of the Board's well-established policy requiring a three-member majority to reverse precedent, Polytechnic further suggests that it would be inappropriate and serve no purpose

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⁴ In *NYU II*, Petitioner GSOC/UAW strenuously objected to the UAW being included in the petition and argued that it was a labor organization under the Act.

⁵ Although they are academically affiliated, Polytechnic and NYU are separate institutions. (Decision at 4)

for the Board to grant the Request for Review in this case seeking reversal of *Brown* if the current members of the Board are unable to do so.⁶

Petitioner's quibbling with the Regional Director's comments regarding the state of Board law regarding graduate student organization and the balance of the academic versus economic relationship of Polytechnic's graduate students to the University also is of no significance. Petitioner states its disagreement with the Regional Director's statement that the Board in *Brown* returned to the law existing prior to *NYU I* "which held that graduate assistants were not statutory employees." (*See* Pet. Request for Review at 10-12) However, the Board in *Brown* disagreed with this view, and Petitioner's contrary reading of the law is not relevant here.

Finally, Petitioner's claim that the Regional Director failed to accord the appropriate weight to the economic relationship that the graduate student assistants have with Polytechnic is neither factually supported nor legally relevant. (*See* Pet. Request for Review at 12-13) As the record demonstrates, the relationship that the graduate student assistants have with Polytechnic is primarily educational in nature. They attend Polytechnic to receive academic degrees as students, not to seek employment as staff; and, in all respects the services that they perform for the University are inextricably linked, if not identical to, their graduate studies: (i) they must be enrolled as students to receive their appointments; (ii) their

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⁶ See, e.g., Tradesmen Int'l, 338 NLRB at460 (explaining that the Board was bound to apply its extant precedent absent three votes to overrule it); accord DaimlerChrysler Corp., 344 NLRB at 1324, n.1; see also Progressive Electric, Inc. v. NLRB, 453 F.3d 538, 552 (D.C. Cir. 2006) (recognizing the Board's practice of adhering to its precedent absent a three-vote majority to overrule it, and enforcing on other grounds a Board decision that followed the practice). Recently, in Hacienda Resort Hotel & Casino, 355 NLRB No. 154 (August 27, 2010), although two members believed that precedent should be overruled in determining the dispute, the two-member concurrence declined to do so, recognizing that "it is the tradition of the Board that the power to overrule precedent will be exercised only by a three-member majority of the Board." Id at *5-*6, citing Chicago Truck Drivers Local 101 (Bake-Line Products), 329 NLRB 247, 254 (1999) ("it is not the Board's usual practice to overrule prior cases by the votes of two of a three-member panel").

duties are directly related to, if not coextensive with, their academic study; and (iii) they are often supervised by faculty in their home academic departments. (*See* Decision at 5-6, 8, 11, 14; Tr. 115, 121-22, 136, 138 (Han); Tr. 315, 572-73 (Bonilla); Tr. 347 (Becker); Tr. 432-3, 436 (Zurawsky); Tr. 475-76, 489 (Garetz); Tr. 640-41 (Ives); EX 4 at 3; EX 8 at p 48; EX 9) Petitioner's argument is simply another expression of its disagreement with *Brown*, which directly supports the Regional Director's conclusion that "the petitioned-for unit has more of an academic relationship with the university than economic." (Decision at 15)

II. PETITIONER HAS NOT PRESENTED ANY BASIS FOR REVIEW OF THE REGIONAL DIRECTOR'S DETERMINATION THAT, EVEN IF *BROWN* WERE REVERSED, RAS ARE NOT EMPLOYEES UNDER THE ACT

In addition to asking the Board to reconsider *Brown*, Petitioner contends that the Board should grant review because the Regional Director erred in his conclusion that RAs would not be considered employees under *Leland Stanford* and *NYU I*, even if *Brown* were reversed. (*See* Pet. Request for Review at 16-17) Petitioner does not explain the grounds for this request, but argues principally that Polytechnic's RA's are distinguishable from those in *Leland Stanford* and *NYU I*, because they perform services for the University. The Regional Director's holding that the RAs at Polytechnic are substantially the same as those previously held by the Board not to be employees is plainly supported by the record – and not clearly erroneous. Indeed, Petitioner does not dispute the Regional Director's specific and detailed factual findings supporting his holding.

As the Regional Director found, in order to fulfill their obligations as RAs, students at Polytechnic are expected to do one only one thing: perform the research necessary to complete their doctoral thesis. The record demonstrates that (i) the research projects associated with RA

positions are almost always identical to an RA's thesis research (Decision at 11; Tr. 115, 121-22, 136, 138 (Han); Tr. 433 (Zurawsky; Tr. 472-7 (Garetz)); (ii) the PI on a research grant is also an RA's thesis advisor (Tr. 120 (Han); Tr. 427 (Zurawsky); Tr. 475 (Garetz); (iii) RA's receive academic credit toward their degree for the research they perform as an RA (Decision at 11; Tr. 138, 163, 167-68 (Han); Tr. 356 (Becker); Tr. 434 (Zurawsky)); and (iv) all students in the research laboratory, RA or not, are performing the same task, completing their thesis research. (Tr. 434 (Zurawsky))

The Regional Director relied directly on the Board's decisions in *Leland Stanford* and NYU I in finding that Polytechnic's RAs are not employees under the Act because, just like the RAs at issue in those cases, they do not "perform work" -i.e., do not perform services for Polytechnic. Petitioner seeks to distinguish the Polytechnic RAs in just two ways: (i) that unlike the students at Stanford, Polytechnic RAs generally pay taxes on their stipends; and (ii) that Polytechnic receives some benefits from the RA's research. Although it is true that the RAs in Leland Stanford did not pay taxes on the remuneration they received and RAs at Polytechnic do, this reflects nothing more than a change in the tax law, not a change in the nature of the RA position. See The 1986 Tax Reform Act amending I.R.C. § 117. As the tax code was modified in 1986, the RAs in NYU I were deemed not to be employees despite paying taxes on their stipends. Also, as the Regional Director held and the Board affirmed in NYU I, the fact that the University received the same types of benefit from RAs relied on by Petitioner here is "not directly relevant to the inquiry of whether an individual is providing services to the Employer under its control in exchange for compensation." 332 NLRB at 1220, n.50, 1221. Here, as in NYU I, RAs perform research associated with external contracts, which may provide indirect benefits to the Polytechnic both by helping to fulfill

the University's obligations under the external grants and by increasing the University and

faculty's standing and reputation in the research community. (See Decision at 15) However,

this does not change the nature of the academic relationship between RAs and Polytechnic.

Indeed, universities have always received similar benefits from graduate students' research

activities.

In sum, the Regional Director properly held that Polytechnic RAs should be excluded

from collective bargaining under the Act pursuant to Leland Stanford and NYU I.

Petitioner's request that the Board grant review of the Decision with respect to the status of

Polytechnic RAs under the Act should be denied.

CONCLUSION

For the reasons set forth above, the Board should deny Petitioner's Request for

Review.

New York, New York

September 20, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that copies of the within Conditional Request For Review in Case No. 29-

RC-12054 has been served by electronic mail on this date on:

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Dated: September 20, 2011 New York, New York

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